

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WARREN E. ARMSTEAD,

Petitioner,

v.

DOUG WADDINGTON,

Respondent.

CASE NO. C07-0025-JCC

ORDER

This matter comes before the Court on the Report and Recommendation (“R&R”) of United States Magistrate Judge Mary Alice Theiler (Dkt. No. 38) and Petitioner’s Objections thereto (Dkt. No. 39). Having reviewed the relevant materials submitted by the parties, the Court ADOPTS the R&R and DISMISSES the petition for writ of habeas corpus with prejudice.

I. BACKGROUND

In January of 2004, Petitioner was convicted in Snohomish County Superior Court on various charges, including drug possession, identity theft, possession of stolen property, and forgery. He received a 50-month sentence, which is the subject of this 28 U.S.C. § 2254 action.

The Snohomish County Superior Court filed Petitioner’s sentence on February 13, 2004. Petitioner initiated his first personal restraint petition with the Washington Court of Appeals on

December 30, 2004. That petition was dismissed on December 5, 2005. Petitioner did not seek review of the dismissal. Petitioner filed his second personal restraint petition with the Washington Supreme Court on September 8, 2006. That court dismissed the petition as time-barred on December 1, 2006. Petitioner brought the present federal habeas petition on January 16, 2007. Magistrate Judge Theiler issued an R&R on July 9, 2007 recommending dismissal of the petition with prejudice. Petitioner objected to the R&R on July 23, 2007.

II. ANALYSIS

In this matter, the only form of relief available to overcome the one-year statute of limitations imposed by the AEDPA would be equitable tolling. *See* 28 U.S.C. § 2244(d)(1); *Calderon v. United States Dist. Court*, 128 F.3d 1283, 1288 (9th Cir. 1997). After thoroughly examining the appropriateness of equitable tolling in this matter, the R&R found it unwarranted. Petitioner objected to the R&R, but failed to raise new arguments for this Court to weigh in regard to equitable tolling.

The Court finds that the R&R properly addressed Petitioner's claims. As Petitioner waited at least seventeen-and-a-half months to file the present habeas petition, Petitioner's claim is time-barred. *See* § 2244(d)(1); Wash. RAP 5.2(a). The Court finds no "extraordinary circumstances" beyond the Petitioner's control that would provide relief in the form of equitable tolling. *Calderon*, 128 F.3d at 1288.

III. CONCLUSION

For the foregoing reasons, the Court ADOPTS the R&R and DISMISSES the petition for writ of habeas corpus with prejudice.

SO ORDERED this 29th day of August, 2007.



John C. Coughenour
United States District Judge